



# Dependent Adult Abuse Rules Training

## IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

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# Ground Rules

- Following today's power point presentation, we will take questions related to the presentation, time allowing.
- As DAA investigations are so fact specific, we will not be responding to questions regarding specific scenarios/hypotheticals, and cannot discuss any pending cases or investigations.

# DIA's Responsibility for Dependent Adult Abuse

- DIA is responsible for investigating allegations of abuse occurring in health care facilities and programs:
  - Health Care Facilities
    - Nursing Facilities
    - Residential Care Facilities
    - Intermediate Care Facilities
  - Hospitals
  - Assisted Living Programs
  - Adult Day Services
  - Elder Group Homes

# The Law

- July 1, 2008: Iowa Code chapter 235E (new law) became effective changing DIA's responsibility for dependent adult abuse investigations:
  - Changed the standard from negligence to gross negligence (higher standard)
  - Made all staff members a "caretaker"
  - Allowed DIA rulemaking (regulation) authority
- January 1, 2010: Iowa Administrative Code chapter 481– 52 rules became effective implementing 235E

# Abuse Case

- DIA must prove there is:
  - 1-A dependent adult victim
  - 2-A caretaker
  - 3-Abuse

# Dependent Adult

- “*Dependent Adult*” means a person eighteen years of age or older whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired, either temporarily or permanently.

# Caretaker

- “***Caretaker***” means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court.
- “***Staff member***” means a person who provides direct or indirect treatment or services to residents in a facility or program.

# Caretaker (cont'd)

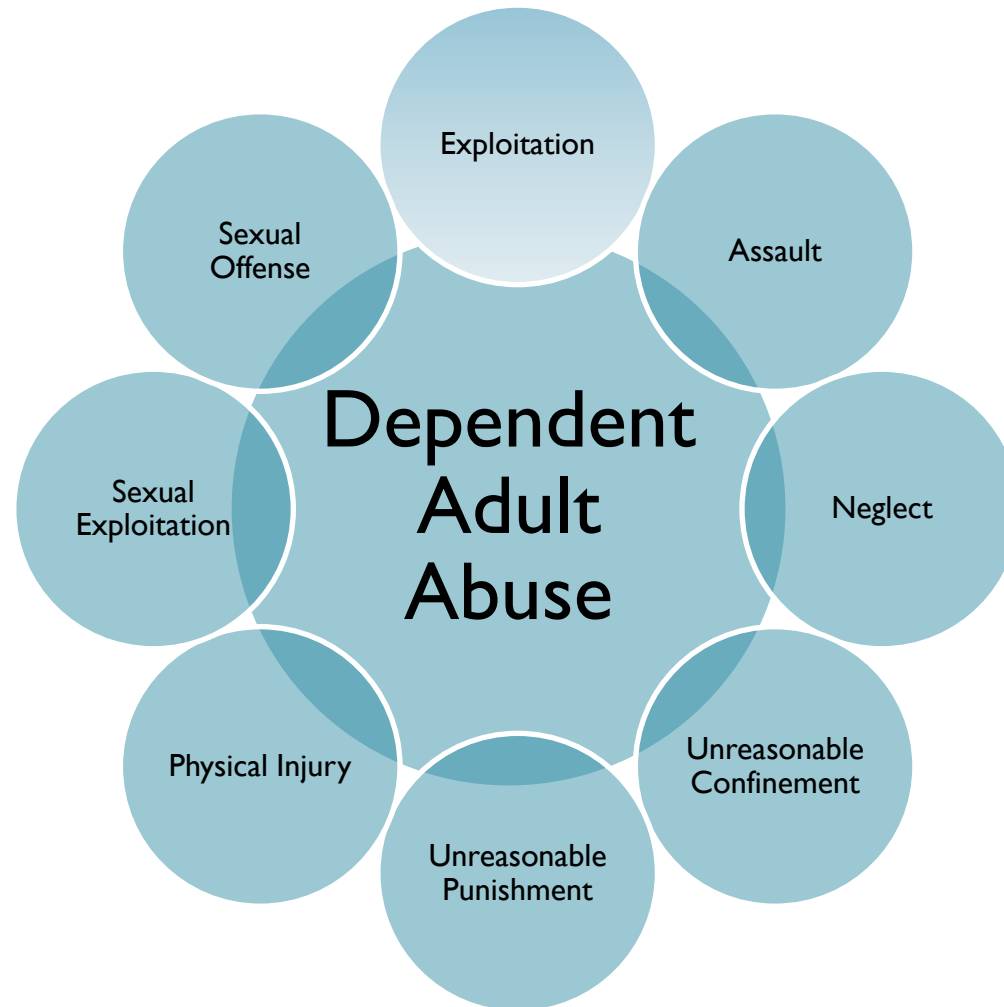
- For the purpose of an allegation of **exploitation**:
  - if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.



# What is Dependent Adult Abuse?

- Any of the following as a result of the *willful misconduct* or *gross negligence* or *reckless acts* or *omissions* of a caretaker taking into account the totality of the circumstances:
  - Physical Injury
  - Unreasonable Confinement
  - Unreasonable Punishment
  - Assault
  - Sexual Offense
  - Exploitation
  - Neglect
  - Sexual Exploitation

# Categories of Abuse



# Physical Injury

- A physical injury to, or injury which is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances.

# Ex. Physical Injury

- Staff discover a large hematoma on a resident's arm in the a.m. The resident says the aide who helped her on the bed pan overnight handled her roughly. Resident describes the person and the description accurately matches that of the one aide who provided cares to the resident on the night shift. The resident has no history of false allegations against staff.
- = Physical Injury

# Unreasonable Confinement

- Confinement that includes, but is not limited to the use of restraints, either physical or chemical, for the convenience of staff.
  - Does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

# Ex. Unreasonable Confinement

- A staff member correctly and politely tells a resident that they are not to attempt to get out of their chair or to walk without assistance, based on the instruction of family members and the individual's physician. The staff member responds to an emergency call two hours later to find the person on the floor. The person is transported to the hospital and is found to have a broken hip.
- ≠ Unreasonable Confinement

# Unreasonable Punishment

- A willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult.
- Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

# Ex. Unreasonable Punishment

- A staff member was found to be using inappropriate language with a resident. The staff member would raise their voice with the resident and demand that they get back in bed, say that they didn't have time to deal with their concern because they had other more important things to do, tell them that if they didn't do what they were told to do that they would not be allowed to go to dinner, criticize the resident for soiling themselves, etc.
- = Unreasonable Punishment



# Assault

- The commission of any act which is generally intended to cause pain or injury to a dependent adult, or
- which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive, or
- any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

# Ex. Assault

- At the dining table, a resident reaches out for another resident's food and a staff member slaps the resident on the forearm.
- = Assault

# Exploitation

- A caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates...
- a dependent adult's funds, assets, medications, or property...
- with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property...
- for the benefit of someone other than the dependent adult.

# Ex. Exploitation

- A staff member was discovered to have used a resident's cell phone (without permission) to make outgoing calls on numerous occasions. The cell phone was always returned to the resident's room after usage. Additional charges were incurred by the resident due to the worker's usage.
- = Exploitation
- Same situation as above except no additional charges were incurred by the resident due to the staff member's usage.
- = Exploitation

# Sexual Exploitation

- Any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. “Sexual exploitation” includes but is not limited to:
  - 1-Kissing;
  - 2-Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
  - 3-A sex act as defined in Iowa Code section 702.17;
  - 4-The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.
- “Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by caretaker acting within the scope of the practice or employment of the caretaker, the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

# Ex. Sexual Exploitation

- A worker used his personal cell phone to take a picture of a partially clothed resident and shared that picture with other staff members during a lunch period. This was a first occurrence.
- = Sexual Exploitation, *if* the following body parts are exposed:
  - Breast
  - Groin
  - Buttock
  - Anus
  - Pubes
  - Genitals

# Neglect

- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.

# Ex. Neglect

- A staff member attempted what should have been a two-person lift by herself due to a shortage of staff on that particular shift. As a result, the resident suffered a minor injury to a pre-existing wound on his leg which required medical attention.
- Abuse? Other facts to consider include:
  - Facility policy
  - Staff member's prior history and disciplines
  - Staff member's knowledge of resident and associated risks
  - Staff member's motivation: convenience or necessity?



## Ex. Neglect

- A staff member is asked by a resident on a restricted diet for something to eat that is a restricted dietary item for the resident. The staff member gives the resident the food item knowing that the resident is not supposed to get it.
- = Neglect

# Ex. Neglect

- A staff member was just ready to clock out at the end of her shift and was in a hurry to get home because she had a sick child. She was told by a supervisor that they were short staffed and that she could not leave. She was further informed that if she left she would be charged with neglect and never work as a direct care worker again.
- ≠ Neglect
- If you're faced with a situation where you feel the facility is inadequately staffed, please call DIA's hotline at # **877-686-0027**.

# Definition of Simple Negligence

- **Negligence** is the current standard for dependent adult abuse in the community.
- **Negligence** *was* the standard for dependent adult abuse in facilities prior to July 1, 2008.
- **Negligence** means failure to use ordinary care. It means doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

# Gross Negligence

- “*Gross negligence*” means any act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an *extreme departure* from the ordinary standard of care.

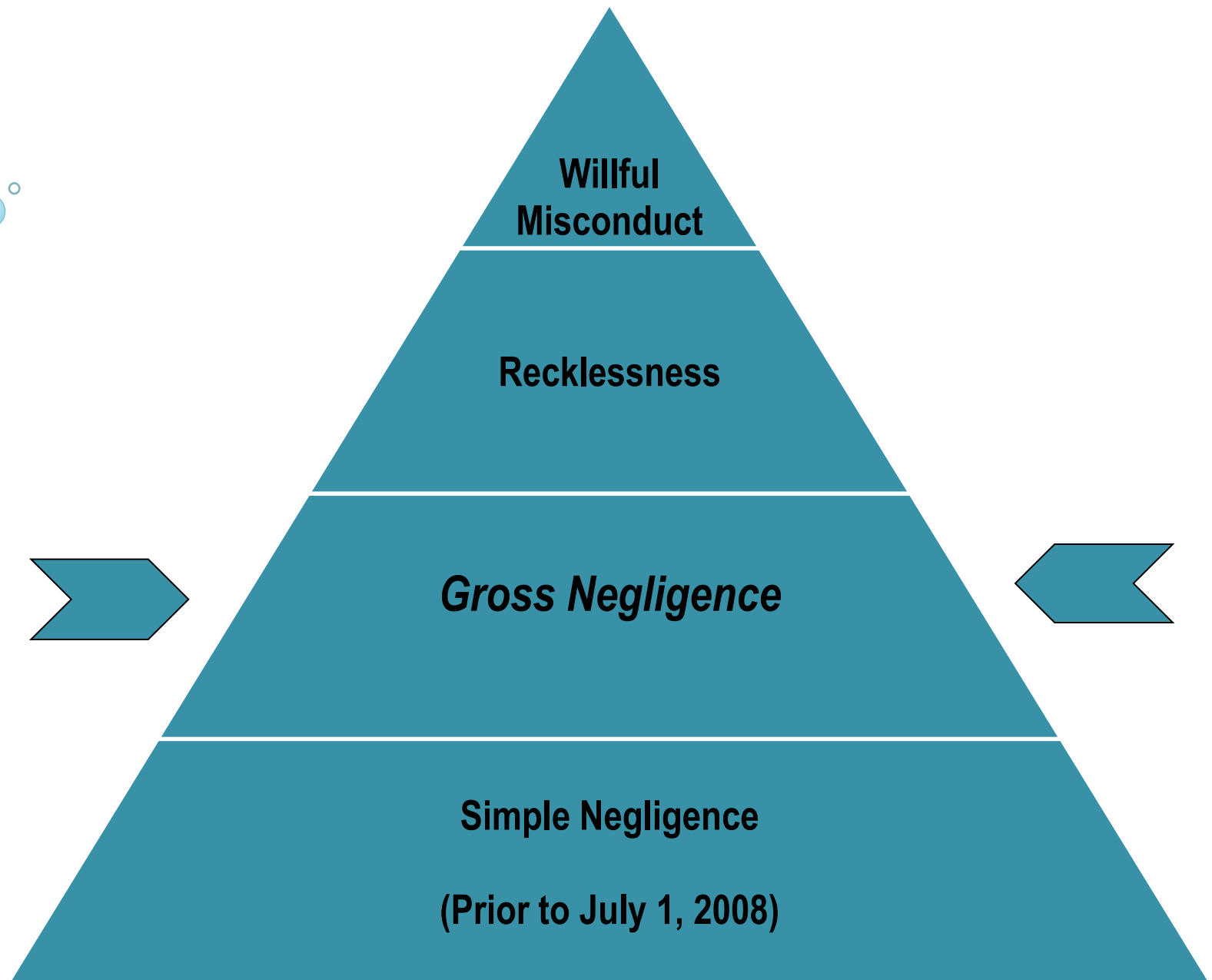
# Recklessly

## Simply put...

A person is “reckless” or acts “recklessly” when he/she disregards the safety of persons/property by his/her acts or omissions. Recklessness is conduct which is consciously done with disregard of the consequences and a person knows, or should know, a risk of harm to another or to property is created.

# Willful Misconduct

- “*Willful misconduct*” means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.



# Possible Findings

- UNFOUNDED
- FOUNDED
- CONFIRMED, NOT REGISTERED\*
  - Categories of abuse eligible for Confirmed Not Registered finding:
    - Neglect
    - Assault
    - Unreasonable Punishment
    - Unreasonable Confinement

\* Exploitation, sexual exploitation, and sexual abuse are *not* eligible for confirmed, not registered and will result in a founded or unfounded report.



# Founded or Confirmed Not Registered

## FOUNDED ABUSE



No Disciplinary Actions  
Positive Interviews  
Reflexive/Frustration



Incident is minor, isolated  
and unlikely to reoccur



**Confirmed Not Registered**



Prior Discipline(s)\*  
Negative Interviews  
Not reflexive  
Pattern



**Founded**

\* Disciplinary actions related to similar actions/incidents

# Analysis

- A staff member is grabbed from behind by a large male resident suffering from dementia and complications from changes in medication. The staff member reacts by putting an elbow into the person's stomach, resulting in a minor and temporary injury to the resident.
- =Physical Injury
- =Confirmed, not registered if interviews reveal the action was reflexive, not intentional.

# Confirmed, Not Registered

- 235E change: An individual can have more than one confirmed, not registered report depending on the circumstances.
- A confirmed, not registered report does not result in the individual's name placed on abuse registry; name kept by DHS only as assessment for five year period.

# Note

- The Department takes investigation of dependent adult abuse allegations very seriously; a founded determination and subsequent placement of an individual's name on the abuse registry undergoes much consideration and discussion.

# Lastly....

- You can find this power point presentation at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do) and [www.dia.iowa.gov](http://www.dia.iowa.gov)
- DIA Complaint Hotline:  
**# 877-686-0027**